

Amendments to House Bill No. 361  
3rd Reading Copy

Requested by Representative Brady Wiseman

For the Senate Local Government Committee

Prepared by Greg Petesch  
April 3, 2009 (10:13am)

1. Title, line 12.

**Following:** "TAXES;"

**Insert:** "PROVIDING FOR THE CREATION, FUNDING, AND USE OF A  
REVOLVING FUND FOR BONDS ISSUED BY AN ENERGY IMPROVEMENT  
DISTRICT;"

2. Page 2, line 2.

**Strike:** "7"

**Insert:** "13"

3. Page 5.

**Following:** line 13

**Insert:** "(5) The issuance of bonds under subsection (3)(i) is  
for a public purpose."

4. Page 9.

**Following:** line 5

**Insert:** "NEW SECTION. Section 8. Creation of revolving fund.

The governing body, in order to secure prompt payment of any  
energy improvement district bonds issued pursuant to [section  
5(3)(i)] as the principal and interest on the bonds become due,  
may create, establish, and maintain by resolution a fund to be  
known and designated as the energy improvement district revolving  
fund. A revolving fund may not be eliminated until all bonds  
secured by the revolving fund and the interest on the bonds has  
been fully paid and discharged. "

**Insert:** "NEW SECTION. Section 9. Source of money for  
revolving fund. (1) For the purpose of providing funds for the  
revolving fund, the governing body:

(a) shall, if the bonds are secured by the revolving fund  
pursuant to [section 8], include in the cost of the loans made  
from the proceeds of the bonds an amount equal to 5% of the  
principal amount of the bonds to be issued;

(b) may, from time to time, transfer to the revolving fund  
from the general fund of the local government an amount that may  
be necessary. The amount transferred is a loan from the general  
fund to the revolving fund.

(c) shall, in addition to a transfer from the general fund  
or in lieu of a transfer, levy for the revolving fund a tax,

declared to be for a public purpose, on all taxable property in the energy improvement district that is necessary to meet the financial requirements of the revolving fund. A tax may not be levied if the balance in the revolving fund exceeds 5% of the principal amount of the then-outstanding energy improvement district bonds secured by the revolving fund. If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding energy improvement district bonds secured by the revolving fund.

(2) Whenever there is money in the energy improvement district fund that is not required for payment of any bond of the district secured by the revolving fund or of interest on the bonds, as much of the money as may be necessary to pay the loan provided for in [section 10] must, by order of the governing body, be transferred to the revolving fund. After all the bonds secured by the revolving fund issued on any energy improvement district have been fully paid, all money remaining in the district fund must, by order of the board, be transferred to and become part of the revolving fund."

**Insert: "NEW SECTION. Section 10. Loan from revolving fund to meet payments on bonds.** During the period described in [section 12(2)], when any energy improvement district bonds secured by the revolving fund or any interest on the bonds becomes due and payable and there is either no money or insufficient money in the appropriate energy improvement district fund after a transfer from the appropriate district reserve account, if established, with which to pay the bonds or interest, an amount sufficient to make up the deficiency must be loaned by the revolving fund to the district fund. The bonds or interest must be paid from the money loaned and money available in the district fund. The loan must be made even if, in the case of bonds bearing interest at a variable rate, the interest rate on the special assessments at the time the loan is made is less than or later becomes less than the interest rate on the bonds."

**Insert: "NEW SECTION. Section 11. Lien arising due to loan from revolving fund.** (1) Whenever a loan is made to an energy improvement district fund from the revolving fund, the revolving fund has a lien for the amount of the loan on the land within the district for which payments of assessments are delinquent and on all unpaid assessments and installments of assessments on the district, whether delinquent or not. The lien also applies to all money coming into the district fund up to the amount of the loan, together with interest on the loan from the time it was made, at the interest rate that is borne by the bonds for which the loan was made and that was determined at the time the loan was made, even if the interest rate on the bonds changes.

(2) If, after all the bonds issued for an energy improvement district have been fully paid and all money remaining in the district fund has been transferred to the revolving fund, there still remains a debt from the district to the revolving

fund, the governing body may foreclose the lien upon property within the district for which unpaid assessments are owed to the district for the purpose of paying off the loan to the revolving fund."

**Insert: "NEW SECTION. Section 12. Covenants to use revolving fund.** (1) In connection with the issuance of energy improvement district bonds, the governing body may undertake and agree:

(a) to make loans or advances, to the extent that funds are available, from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts; and

(b) to provide funds for the revolving fund pursuant to the provisions of [section 9] by annually making a tax levy or, in lieu of the tax levy, a loan from the general fund, subject to the maximum limitations imposed by [section 9].

(2) (a) The undertakings and agreements are binding upon the local government with respect to the energy improvement district bonds until the earlier of:

(i) the date on which all bonds of the issue and interest on the bonds have been fully paid or discharged in a bankruptcy case in which the energy improvement district is the debtor; or

(ii) the date that is the later of:

(A) the final stated maturity date of the bonds; or

(B) the date on which all special assessments levied in the district have been either paid or discharged.

(b) The discharge of delinquent special assessments levied with respect to a particular lot or parcel is considered to occur upon:

(i) the issuance of a tax deed, as provided in 15-18-214, or, if the local government is the recipient of the tax deed, upon the sale, lease, or other disposition of the property by the local government as provided in Title 7, chapter 8, part 22, 23, 24, or 25, or other applicable law; or

(ii) payment in full of the allowed secured claim for the special assessments in a bankruptcy case in which the owner of the lot or parcel is the debtor.

(3) Prior to entering into the undertakings and agreements set forth in subsection (1), the governing body shall take into consideration the following factors, including other circumstances that the governing body may determine to be material to the public interest of securing the bonds or warrants by the revolving fund:

(a) the estimated market value of the lots, parcels, or tracts included in the district at the time that the district is created in comparison to the estimated market value of the lots, parcels, or tracts after the improvements are made;

(b) the diversity of ownership of property in the district;

(c) the amount of the special assessments proposed to be levied against each lot, parcel, or tract in the district in comparison to the estimated market value of the lot, parcel, or

tract after the energy efficiency improvements or off-grid renewable energy systems are made;

(d) the amount of any outstanding special assessments against the property in the district;

(e) the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against property in the district; and

(f) the public benefit of the improvements proposed to be financed.

(4) Any findings or determinations with respect to the factors contained in subsection (3) made by the governing body in a resolution authorizing the undertakings and agreements or the issuance of bonds are conclusive evidence that the governing body has taken into consideration the factors required by subsection (3).

(5) In lieu of the undertakings and agreements set forth in subsection (1), the governing body may determine in the resolution authorizing the issuance of the bonds that the revolving fund does not secure the bonds and that the bonds are payable solely from the district fund created for the bonds and do not have a claim against the revolving fund."

**Insert:** "NEW SECTION. Section 13. Use of excess money in revolving fund. Whenever there is in the revolving fund an amount in excess of 5% of the then-outstanding energy improvement district bonds secured by the revolving fund and the governing body considers any part of the excess to be greater than the amount necessary for payment or redemption of maturing bonds secured by the revolving fund or interest on the bonds, the governing body may order the amount the governing body considers greater than the amount necessary or any part of that amount transferred to the general fund of the local government."

**Renumber:** subsequent sections

5. Page 9, line 7.

**Strike:** "7"

**Insert:** "13"

6. Page 9, line 8.

**Strike:** "7"

**Insert:** "13"

- END -